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Trust II, Merrill Lynch Capital Trust III and
Merrill Lynch, Pierce, Fenner & Smith Incorporated

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE MERRILL LYNCH & CO., INC. : Master File No.:
SECURITIES, DERIVATIVE AND ERISA : 07cv9633 (LBS)(AJP)(DFE)
LITIGATION :
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This Document Relates to: : **ECF Case**
Securities Action, 07cv9633(LBS)(AJP)(DFE) : **Electronically Filed**
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**NOTICE OF MOTION OF DEFENDANTS MERRILL LYNCH & CO., INC.,
MERRILL LYNCH CAPITAL TRUST I, MERRILL LYNCH CAPITAL TRUST II,
MERRILL LYNCH CAPITAL TRUST III AND MERRILL LYNCH, PIERCE, FENNER &
SMITH INCORPORATED TO DISMISS THE CONSOLIDATED AMENDED CLASS
ACTION COMPLAINT AND TO STRIKE CERTAIN ALLEGATIONS**

PLEASE TAKE NOTICE that, upon the annexed Consolidated Amended Class Action Complaint in the above-captioned action; the Memorandum of Law in Support of The Motion of Defendants Merrill Lynch & Co., Inc., Merrill Lynch Capital Trust I, Merrill Lynch Capital Trust II, Merrill Lynch Capital Trust III and Merrill Lynch, Pierce, Fenner & Smith Incorporated to Dismiss the Consolidated Amended Class Action Complaint and to Strike Certain Allegations; the accompanying Declaration of Jay B. Kasner, dated July 18, 2008; and all prior papers and proceedings herein, defendants Merrill Lynch & Co., Inc., Merrill Lynch Capital Trust I,

Merrill Lynch Capital Trust II, Merrill Lynch Capital Trust III and Merrill Lynch, Pierce, Fenner & Smith will move this Court, before the Honorable Leonard B. Sand, at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007, on a date and at a time designated by the Court, for an Order: (a) dismissing the Consolidated Amended Complaint with prejudice pursuant to Fed. R. Civ. P. 12(b)(6), Fed. R. Civ. P. 9(b), and the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(b); (b) striking paragraphs 104-107, 121-123, 140, 168-184, 238(d), 264(c), 268(c), (d), 280(d), 290(d), 297(c), (d) and (f), 308, 311, 317 and 336 of the Consolidated Amended Complaint pursuant to Fed. R. Civ. P. 12(f); and (c) for such other and further relief as this Court may deem just and proper.

Dated: New York, New York
July 21, 2008

/s/ Jay B. Kasner

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